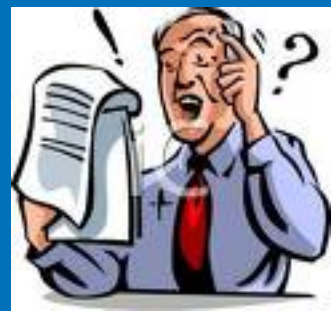


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Reporting and Withholding on Payments to Foreign Persons

A Technical Overview



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Main Types of Chapter 3 Withholding

IRC § 1441 – Withholding of Tax on NRA

IRC § 1442 – Withholding of Tax on
Foreign Corporations

IRC § 1445 – Withholding of Tax on
Disposition of USRPI

IRC § 1446 – Withholding of Tax on ECI
Allocable to Foreign Partners



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Withholding of Tax on NRAs and Foreign Corps - 1441/1442

Income Must Be:

US sourced per sourcing rules

Fixed or determinable, annual or periodic
(FDAP)

Generally not effectively connected with
a US trade or business



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Sourcing Rules



Personal services

Where performed

Dividends

U.S. / For. Corp.

Interest

Residence/payer

Rents

Location of prop.



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Foreign Persons

Nonresident Alien Individual

Foreign corporation, Foreign Partnership

Foreign Trusts & Foreign Estates

Any other person that is not a U.S. person



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Withholding Agent

Withholding Agent - control, receipt, custody, disposal, or payment of any item of income to a foreign person.

May be individual, corporation, partnership, trust, association, or any other entity.



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Required Documentation

W-8BEN- Beneficial Owner status
and treaty

W-8ECI- Beneficial Owner status
and withholding exemption

W-8EXP- Beneficial Owner status
and withholding exemption

Form W-8IMY – Non Beneficial
Owner Status



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Withholding Rates and Reporting Requirements 1441/1442

Withholding rate of 30% is generally required on Gross Income.

Reduced treaty rate, including exemption from tax may apply.

File withholding tax return Forms 1042 and 1042-S.



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Withholding on Disposition of USRPI by Foreign Persons – IRC § 1445

10% withholding on the amount realized

10% withholding may be reduced

Withholding must be submitted to the IRS by the 20th day of the date of transfer

Foreign seller/transferor must file Form 1040NR or 1120F



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US Real Property Holding Corporations

FMV of its USRPI is at least 50% of its USRPI plus FRPI plus Bus Assets.

If corporation is a USRPHC, any interest in that corporation is a USRPI

If USRPHC disposes of USRPI in private corporation FIRPTA applies to foreign SHs

With publicly traded corporation, FIRPTA applies to any 5% or greater shareholder.



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Partnership Withholding – IRC § 1446

If a partnership has ECI, and

Any portion of that ECI is allocable to a
foreign partner,

That partnership is subject to a
withholding tax at the highest rate for
that foreign partner



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Where to Get More Information

IRC §§ 1441/1442, 1445, 1446, related Treas.
Regs, Publications 515, 519 & 901

<http://www.irs.gov/businesses/small/international/index.html>

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